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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957.

No. 447

JOHN F. BLASKI, PETER S. PEDERSEN, M-P-H MANUFACTURING CORPORATION, INC., PETER S. PEDERSEN, JR., EDWARD MARTIN, and PETER S. PEDERSEN, CO-PARTNERS DOING BUSINESS AS CENTRAL FARM EQUIPMENT COMPANY,

Petitioners,

vs.

HONORABLE T. WHITFIELD DAVIDSON,

Respondent.

PETITION FOR REHEARING.

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HONORABLE T. WHITFIELD DAVIDSON,

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PETITION FOR REHEARING.

To the Honorable Justices of the Supreme Court of the United States:

This is a petition for rehearing of the Court's decision of November 12, 1957, denying petitioners' Petition for Certiorari.

Rehearing is requested because of the additional substantial grounds not heretofore set forth, namely, that:

(1) The decision of the Court below is in direct conflict with a decision of the Court of Appeals for the Seventh Circuit concerning a matter of great public importance, namely, the meaning and interpretation of Sec. 1404(a), Title 28, U. S. C. A.; and

(2) If the decision of the Court below is not in conflict with the applicable decisions of this Court, as contended in the Petition for Certiorari (pp. 2, 7-12), then, it has decided an important question of federal law which has not been, but should be, settled by this Court, and on which there is widespread conflict by this Court, and on which there is widespread conflict in the federal judicial system, as specifically recognized by the Court below in its opinion (Appendix to Petition for Certiorari, pp. 3a and 4a).

Petitioners' attorneys certify to the Court that this petition is presented in good faith and not for purposes of delay, and that it is restricted to the aforementioned substantial grounds available to petitioners although not previously presented.

I.

The Decision of the Court Below Is in Direct Conflict With a Decision of the Court of Appeals for the Seventh Circuit Concerning a Matter of Great Public Importance.

Section 1404(a), Title 28, U. S. C. A., provides as follows:

"'For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division *where it might have been brought.*'"*

In its decision in the case of *Chicago, R. I. & P. R. Co. v. Igoe*, 212 F. 2d 378, the Court of Appeals for the Seventh Circuit, in ruling on the power of a District Court to transfer a cause from the Northern District of Illinois to the Northern District of Iowa, under the above set forth statute, stated as follows, at page 379:

"Whether to transfer a cause under this section rests in the sound discretion of the trial court. Also, *this section presupposes two jurisdictions in which venue may be laid.*"

*All emphasis added.

The *only* jurisdiction in which venue may be laid in a patent suit is controlled solely by Sec. 1400(b), Title 28, U. S. C. A. (*Fourco Glass Company* v. *Transmirra Products Corporation*, 353 U. S. 222, 1 L. Ed. 786, 789). It provides that such an action may be brought *only* in the judicial district:

(1) "Where the defendant resides, *or*

(2) "Where the defendant has committed acts of infringement *and* has a regular and established place of business."

The defendants reside in Texas. They neither have a place of business, nor, so far as is known, have they committed acts of infringement in Illinois.

In spite of this, the Fifth Circuit Court of Appeals below has ruled in this case that, under Sec. 1404(a), Title 28 U. S. C. A., even though the plaintiffs object, the District Court for the Northern District of Texas (where venue is properly laid), has the power to transfer this cause to the Northern District of Illinois (where venue *cannot* properly be laid). This is in *direct conflict* to the above set forth ruling of the Seventh Circuit Court of Appeals that this section of the statute "presupposes *two* jurisdictions *in which venue may be laid.*"

It is well established that the right to select the forum, granted by statute to plaintiffs in federal actions, is a *substantial* right (*Boyd* v. *Grand Trunk Western Railroad Company*, 338 U. S. 263, 266, 94 L. Ed. 55). One of these rights, of course, is the right to choose a forum having venue in which an early trial may be had. In the present instance, the case was set for trial on May 31, 1957 in the Northern District of Texas. It is now being transferred, over plaintiff's objection, to the Northern District of Illinois where, it is respectfully submitted, the Court may take judicial notice it is unlikely to be heard for two, or even three, years.

The meaning of Sec. 1404(a), Title 28 U. S. C. A. is of importance not only in this case. It is of major importance in the administration of the patent laws. The rights of plaintiffs under the statute should not be governed by different rules in different circuits, as they are now. It is respectfully submitted that this Court should resolve this conflict on this important question.

II.

If the Decision of the Court Below Is Not in Conflict With the Applicable Decisions of This Court, Then It Has Decided an Important Question of Federal Law Which Has Not Been, But Should Be, Settled by This Court.

If the decision of the Court below is not in conflict with the applicable decisions of this Court, as contended in the Petition for Certiorari (pp. 2, 7-12) then it has decided an important question of federal law which has not been, but should be, settled by this Court, and on which there is widespread conflict in the federal judicial system.

The question of federal law involved herein is of great importance not only because it directly involves the substantial right of a plaintiff to select its forum (*Boyd v. Grand Trunk Western Railroad Company*, 338 U. S. 263, 266, *supra*), but also because it is a question of great importance to the conduct of litigation in the federal judicial system.

The conflict of decisions with respect to this question is so widespread as to be almost chaotic. Even the Court of Appeals below, in its opinion (Appendix to Petition for Certiorari, p. 3a) expressly recognized that courts in six of our eleven Judicial Circuits held (contrary to its decision) that, even though a defendant moves for a transfer, a district court does not have the power, under Sec. 1404(a), Title 28 U. S. C. A., to grant the motion where

the defendants are not subject to service in the transferee district. One of those six decisions which are admittedly in conflict with the decision of the Court below is the decision of a present Justice of this Court (Justice Whittaker), when he was sitting as a District Court Judge (*General Electric Co.* v. *Central Transit Warehouse Co.*, D. C. Mo., 127 F. Supp. 817). In addition, the rule in the Seventh Circuit (*Chicago R. I. & P. R. Co.* v. *Igoe*, 212 F. 2d 378, 379, *supra*) is in conformity with the decisions of the aforementioned courts in the six Judicial Circuits, and is in conflict with the decision of the Court below.

Under the present conditions the answer to the question of transfer involved herein depends upon which Judicial Circuit is interpreting Sec. 1404(a), Title 28 U. S. C. A. It is a question on which there has been much judicial controversy, as is specifically recognized in the opinion of the Court below (Appendix to Petition for Certiorori, p. 3a). It is an important, substantial question on which there should be no confusion or conflict, and it is respectfully submitted that it is a question which should be settled by this Court.

The extent of the existing conflict demonstrates the major importance of the question presented by this petition in the administration of the laws in the federal judicial system. The federal courts are in hopeless conflict on the question of where an action may properly be transferred under Sec. 1404(a), Title 28 U. S. C. A. An authoritative ruling on the question by this Court is plainly in the public interest, and is required to insure an orderly administration of justice.

Conclusion.

For the reasons stated, it is submitted that this petition for rehearing is well founded in fact and in law and should be granted.

Respectfully submitted,

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